

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**Building Code Appeals Board
Docket No. 05-449**

Debra and Timothy Burke)	
Appellants)	
)	
v.)	
)	
City of Boston)	
Appellee)	
)	

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board (Board) on the Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant variances from 780 CMR §§3603.3.3 and 3603.3.2 of the Massachusetts State Building Code ("Code"). Appellants had applied to the Boston Inspectional Services Department for a building permit to change the siding on two sides of their building, which was filed on April 20, 2007 ("Application").

By letter dated June 27, 2007, Luis Santana, on behalf of the Inspectional Services Department of the Appellee, denied the Application because the change in siding would be in violation of 780 CMR §§3603.3.1 and 3603.3.2.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on August 2, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

The Appellants were present at the hearing.

Discussion

The Board heard testimony from the Appellants and reviewed various plans with respect to the subject property concerning whether exterior vinyl siding may be installed on walls that lie within three feet of a property line. Sections §§3606.3.1 and 3603.3.2 state:

3603.3.1 Exterior walls: Exterior walls located less than three feet (0.914m) from property lines shall have a minimum of one-hour fire-

resistive rating. The fire-resistive rating of exterior walls located less than three feet (0.914 m) from a property line shall be rated for exposure from both sides. Projections beyond the exterior wall shall not extend more than 12 inches (0.305 m) into areas where openings are prohibited.

3603.3.2 Openings: Openings shall not be permitted in exterior walls of dwellings located less than three feet (914 mm) from the property line. This distance shall be measured perpendicular to the vertical plane of the wall.

The Appellants have asserted that their building lies nine (9) feet from its side neighbor's building at 11 Salem Street; greater than 25 feet from its rear neighbor at 9R Salem Street; greater than 24 feet from its neighbor at 5R Salem Street; and greater than nine (9) feet from its neighbor at 271 Main Street.

Considering the three-foot distance requirement in §§ 3603.3.1 and 3603.3.2, the Board expressed concerns that it did not have sufficient information to confirm that, as matter of the City's zoning restrictions, nearby buildings would be prohibited from being reconstructed within six feet of the Appellants' building. Further, the Board was concerned that the Appellants had not provided information about upgrading smoke detection systems in their building. The Board also advised the Appellants to consider alternatives that would allow them to comply with the Building Code. For example, if neighboring buildings could be rebuilt closer to the Appellants' property line than they are currently, as a matter of the City's zoning, then the Appellants' building may need exterior walls with a different fire-resistive rating than the proposed vinyl siding. The Board directed the Appellants to obtain and provide all such information about the above concerns to the Board. To address the Board's concerns, the Appellants requested the Board to grant them a continuance of the hearing.

As a result, the Chair entertained a motion to continue the hearing, to give the Appellants time to obtain the further information described above. Following testimony, and based upon relevant information provided, Board members voted to **CONTINUE** the hearing. The Board voted as indicated below.

Decision

Board members voted to grant a continuance to allow time for the appellants to provide support material indicating that the granting of said variance would not pose any difficulties relating to established zoning criterion. Said information was provided on such and such a date and is made part of this decision. Based on testimony offered at the hearing and supported material submitted thereafter, Board members voted to . . .

☒..... Granted

☐..... Denied

☐..... Rendered Interpretation ☐

☐..... Granted with conditions

☐..... Dismissed


The vote was:

☒..... Unanimous

..... ☐ Majority


Brian Gale

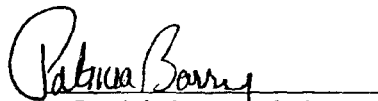

Rob Anderson-Chair


Jacob Nunnemacher

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: September 28, 2007


Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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